

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

ARNO GRAVES, et al.)	
on behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:19-cv-05089-SRB
)	
SMITTY’S SUPPLY, INC., et al.)	
)	
Defendants.)	

SCHEDULING ORDER

Before the Court in *In re Smitty’s/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practs., & Prod. Liab. Litig.*, No. 4:20-MD-02936-SRB, is Plaintiffs’ Motion for Entry of Amended and Consolidated Scheduling Order, which sought a scheduling order pertaining not only to the instant case, but also the other consolidated cases apart of the multidistrict litigation (“MDL”). (Doc. #1158.) Defendants opposed the motion, stating that with trial scheduled in August in the instant case, meeting other deadlines pertaining to the MDL were untenable. The Court held a hearing on March 13, 2024. Upon review of the parties’ submission and as discussed at the hearing, the Court enters the following scheduling order, which pertains only to the instant case:

1. **Plaintiffs’ Proposed Trial Plan.** Plaintiffs shall clarify what individual and class claims they intend to try on or before **May 1, 2024**.

2. **Expert Designation Deadlines.** Plaintiffs shall designate and provide any report for any expert witnesses they intend to call at trial on or before **April 12, 2024**. Depositions of Plaintiffs’ experts shall follow shortly thereafter. Defendants shall designate and provide any report for any expert

witnesses they intend to call at trial on or before **May 17, 2024**. Depositions of Defendants' experts shall follow shortly thereafter. The parties shall designate and provide any report of rebuttal expert witnesses they intend to call at trial on or before **May 31, 2024**. This paragraph applies to all witnesses from whom expert opinions will be elicited at trial, regardless of whether the witness was specially retained to provide trial testimony. Each party shall ensure compliance with Fed. R. Civ. P. 26(a)(2)(B) at the time of the party's expert witness designations. Expert witnesses may testify only as to matters contained in the report required by Rule 26(a)(2)(B), unless leave of Court is granted upon good cause shown.

3. **Discovery Deadline.** The parties have substantially completed pretrial discovery. Any remaining pretrial discovery shall be completed on or before **May 31, 2024** ("Closure Date"). Discovery shall not be conducted after the Closure Date, except by Order of the Court for good cause shown. Nothing contained herein shall excuse a party from the continuing obligation to update discovery responses in accordance with Fed. R. Civ. P. 26(e).

4. **Dispositive Motion Deadline.** All dispositive motions shall be filed on or before **May 1, 2024**. All dispositive motions shall have a separate section wherein each statement of fact is individually numbered so that any party opposing such motion may refer specifically to a genuine issue of material fact. Suggestions in opposition to a dispositive motion shall begin with a concise listing of material facts as to which the party contends a genuine dispute exists. All motions for summary judgment shall comply with Local Rules 7.0 and 56.1. Absent extraordinary circumstances, the Court is not inclined to grant motions for extension of time to respond or motions to exceed the page limits.

5. **Daubert Motion Deadline.** All motions to strike expert designations or preclude expert testimony premised on *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), shall be filed on or before **June 7, 2024**. The deadline for filing motions in limine does not apply to these

motions. Failure to file a Daubert motion prior to this deadline will constitute waiver of any arguments based on *Daubert*.

6. **Jury Instruction Deadline.** The parties shall jointly file an original (without sources) set and an annotated (with sources) set of proposed jury instructions on or before **June 1, 2024**. Proposed instructions shall reflect the authorities upon which the instruction is based and should be taken from or drawn in the manner of Model Civil Jury Instructions for the District of Courts of the Eighth Circuit and/or Missouri Approved Instructions (MAI) where available and appropriate. All instructions shall be designated as Instruction No. _____. Each party shall submit its proposed version of the instructions upon which the parties do not agree, along with a written objection to the other party's version.

7. **Motions in Limine Deadline.** The parties shall file motions in limine on or before **July 1, 2024**. Responses to motions in limine shall be filed on or before **July 15, 2024**. Replies supporting motions in limine shall be filed on or before **July 24, 2024**.

8. **Trial.** Trial shall begin on **August 26, 2024**, and be scheduled for two weeks. The pretrial conference in this case shall be held **on August 13, 2024, at 9:00 AM**, at the United States District Courthouse in Kansas City, Missouri in Courtroom 7B.

9. **Pretrial Conference Document Deadlines.** The pre-trial conference documents listed below shall be filed as specified.

A. On or before **July 8, 2024**, each party shall file and serve:

- i. A list of all witnesses who may be called to testify at trial. If a witness is not listed by a party, that witness will not be permitted to testify absent leave of Court and then only for the purpose of unanticipated rebuttal or impeachment;

- ii. A designation, by page and line number, of any deposition testimony to be offered in evidence by that party;
- iii. An exhibit index of all exhibits that may be offered at trial. If an exhibit is not listed by a party, that exhibit will not be admitted absent leave of Court. The exhibit index should be prepared on a form provided by the Clerk's office that can be found at <http://www.mow.uscourts.gov/forms.html#district>. Each exhibit will be designated as either "Plaintiff's" or "Defendant's," numbered with an Arabic numeral, and described following the enumeration. If an exhibit consists of more than one (1) page or part, the number of pages or parts shall be included in the description. The exhibit number must be marked on each exhibit at the time of listing. It is not necessary to include exhibits to be used only for impeachment or rebuttal purposes. After the time for filing the exhibit index has expired, no supplemental or amended index will be filed without leave of Court for good cause shown; and
- iv. A stipulation as to the admissibility of evidence, listing the exhibits for which authenticity and foundation are not contested.

B. The parties may file a stipulation of any uncontroverted facts on or before **July 8, 2024**.

C. On or before **July 22, 2024**, each party shall file and serve:

- i. Any objections to proposed deposition testimony designated by any other party;
- ii. Any objections to proposed exhibits designated by any other party; and

iii. A designation, by page and line number, of any deposition testimony to be offered as counter-designation to deposition testimony designated by other parties.

D. On or before **July 29, 2024**, each party shall file and serve any objections to proposed deposition testimony offered as a counter-designation by other parties.

10. **Trial Document Deadline.** On or before **August 13, 2024**, counsel for each party shall agree upon a statement to be read to the jury setting forth the background of the case and the claims to be asserted. This statement will be read to the jury panel prior to voir dire.

IT IS SO ORDERED.

Date: March 13, 2024

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE